

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016040019

ORDER GRANTING PEREMPTORY
CHALLENGE

On June 3, 2016, at 12:41 p.m.,¹ Student, through legal counsel Tania Whiteleather, filed a peremptory challenge, seeking to disqualify Administrative Law Judge Judith Pasewark from hearing this case. Student's peremptory challenge is made pursuant to Government Code section 11425.40, subdivision (d), of the Administrative Procedures Act, and California Code of Regulations, title 1, section 1034.

Government Code section 11425.40, subdivision (d), establishes the criteria for disqualification of the presiding officer. A party is entitled to one peremptory challenge (disqualification without cause) to an ALJ assigned to an Office of Administrative Hearings hearing. (Cal. Code Regs., tit. 1, § 1034, subds. (a) & (b); Gov. Code, § 11425.40, subd. (d).) In no event will a peremptory challenge be allowed if it is made after the hearing has commenced. In addition, if at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference. (Cal. Code Regs., tit. 1, § 1034, subd. (c).) A peremptory challenge is not allowed on reconsideration or remand, and cannot be made after a hearing has begun. (Cal. Code Regs., tit. 1, § 1034, subd. (a).)

The prehearing conference did occur on June 3, 2016, at 1:00 p.m., with ALJ Pasewark because she had not received the peremptory challenge, and Ms. Whiteleather did not attend the prehearing conference. However, all ALJ Pasewark did at the prehearing conference was to grant Student's continuance request. Therefore, Student's peremptory challenge is timely made and is granted pursuant to Government section 11425.40, subdivisions (a) and (d), and California Code of Regulations, title 1, section 1034, subdivision (c).

¹ The request is dated May 3, 2016, but proof of service is dated June 3, 2016.

ORDER

1. Student's challenge of ALJ Pasewark is granted. This case is assigned for all purposes to ALJ Paul Kamoroff.
2. The matter will proceed as previously scheduled.

DATE: June 6, 2016

DocuSigned by:

Peter Paul Castillo

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PETER PAUL CASTILLO

Presiding Administrative Law Judge
Office of Administrative Hearings